IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WA.No. 1346 of 2006(E)

AGAINST THE JUDGEMENT/ORDER IN OP.35403/2002 Dated 23/05/2006
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APPELLANT: PETITIONERS 2 & 3 AND THIRD PARTY
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1. SALIL.S.R, EXCISE GUARD,
EXCISE CIRCLE OFFICE, MALLAPPALLY,
CHENGAROOR.P.O, PATHANAMTHITTA, PIN-689 594.

2. T.K.SURENDRANATH, EXCISE GUARD,
EXCISE RANGE OFFICE,
THIRUVALLA.

3. MATHEW JOHN, EXCISE GUARD,
EXCISE CIRCLE OFFICE, MALLAPPALLY,
CHENGAROOR.P.O, PATHANAMTHITTA, PIN-689 594.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
EXCISE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE EXCISE COMMISSIONER,
COMMISSIONERATE, THIRUVANANTHAPURAM.

3. THE ASSISTANT EXCISE COMMISSIONER,
PATHANAMTHITTA.

4. THE ASSISTANT EXCISE COMMISSIONER,
KOZHIKODE.

**5. V.J.MADHU, PREVENTIVE OFFICER,
KERALA STATE BEVERAGES CORPORATION,
PATHANAMTHITTA.**

**6. T.JAMES, PREVENTIVE OFFICER,
EXCISE RANGE OFFICE, MALLAPPALLY.P.O.**

**7. N.CHANDRAN PILLAI, EXCISE ENFORCEMENT
& ANTI NARCOTIC SPECIAL SQUAD,
PATHANAMTHITTA.**

**8. K.MADHAVAN NAIR,
EXCISE CIRCLE OFFICE,
PATHANAMTHITTA.**

**9. K.BABYKUTTY,
KERALA STATE BEVERAGES CORPORATION,
FL9, PATHANAMTHITTA.**

**10. K.RAJAN, EXCISE RANGE OFFICE,
THIRUVALLA.**

**11. DANIEL BABY,
EXCISE RANGE OFFICE,
KONNI.**

**12. N.CHANDRABABU,
EXCISE GUARD, EXCISE ENFORCEMENT & ANTI NARCOTIC
SPECIAL SQUAD, PATHANAMTHITTA.**

**13. S.POOKUTTY,
EXCISE GUARD, EXCISE RANGE OFFICE,
ADOOR.**

**14. G.ANIL KUMAR,
EXCISE GUARD, EXCISE CIRCLE OFFICE,
THIRUVALLA.**

**15. T.SURENDRAN PILLAI,
EXCISE GUARD, EXCISE CIRCLE OFFICE,
THIRUVALLA.**

**16. K.G.UTHAMAKUMAR,
EXCISE RANGE OFFICE,
THIRUVALLA.**

**17. K.B.CHANDRA BABU,
EXCISE GUARD, EXCISE ENFORCEMENT & ANTI NARCOTIC
SPECIAL SQUAD, PATHANAMTHITTA.**

18. PADMAKUMAR.L,
KUDIPPALLINIKARTH, NADUVATH NAGAR.P.O,
CHERTHALA, ALLEPPEY.

BY ADV. SRI.S.MUHAMMED HANEEF
SRI.P.RAVINDRAN FOR R6, 12, 14 AND 16
SMT.ANU SIVARAMAN
DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
GOVERNMENT PLEADER SRI.SANDESH RAJA FOR R1 TO 4

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10/07/2007, ALONG WITH WA NO. 1454 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & ANTONY DOMINIC, JJ.
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W.A. NOs. 1346 & 1454 OF 2006
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Dated this the 10th day of July, 2007

J U D G M E N T

Radhakrishnan, J.

Writ appeal 1346 and 1454/06 arises out of the judgment in OP No.35403/2002. OP 35403/02 was preferred seeking a writ of certiorari to quash Ext.P6 order passed by the Government and also for a writ of mandamus directing the 3rd respondent to recast the seniority list of Excise Guards in Pathanamthitta Division as on 31/5/1999 including the petitioners name and also for other consequential reliefs.

2. Petitioners had approached this Court earlier by filing WP(C) No.26793/02, which was disposed of by this court directing the Government to consider their representations. Accordingly, Government considered their representations and passed Ext.P6 order dated 28.06.2003. The order would show that the Special Squad II, Kozhikode was shifted as Special Squad to Pathanamthitta as per GO(MS).15/88/TD dated 8.2.88. Consequently petitioners who were included in the Special Squad No.2 were also shifted to Pathanamthitta Division. The question

which came up for consideration was with regard to the lien and seniority in the post of Excise Guards, whether their lien have to be treated at Kozhikode or Pathanamthitta. Commissioner of Excise had pointed out that they were working in Pathanamthitta Division for more than 12 years and no action was taken by the Assistant Excise Commissioner, Pathanamthitta to revert them back to Kozhikode and there was no move on their part as well to shift their lien and get their names included in the seniority list of Excise Guards in Pathanamthitta District. It was also pointed out their probation declaration, grant of leave, authorisation of annual increment etc were handled in Pathanamthitta Division.

3. Taking note of all aspects of the matter and also the judgment in OP No.3966/90 and G.O(MS) No.4/PD dated 2.1.1961, the Government took the view that the lien and seniority should be retained at Kozhikode Division and not in Pathanamthitta Division. We find that the petitioners were already included in the seniority list prepared at Kozhikode Division on 01/04/77 to 31/12/1990, which is referred to as Ext.R5(a). Further it was also pointed out that petitioners name were not included in the final seniority list published as per Ext.R5(f) in the Pathanamthitta Division.

4. It may also be noticed that, in the judgment in W.A.No.504/1990, Division Bench noticed that persons like the petitioners were sent to Pathanamthitta Division on deputation and they are bound to go back to Kozhikode Division. Further petitioners have not been absorbed in the Pathanamthitta Division. In such circumstances, we find no reason to interfere with Ext.P6 Government Order. At the same time, we make it clear that the petitioners should be given due seniority, promotions and other benefits in the Kozhikode Division. Writ appeal lacks merits. Dismissed

We make it clear that Government would take expeditious steps to see that the petitioners seniority be fixed at Kozhikode Division and give them consequential promotions strictly in accordance with the position in the seniority list of Kozhikode Division, which has to be finalised within a period of three months from the date of receipt of a copy of this judgment.

K.S.RADHAKRISHNAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp